

AMENDED IN ASSEMBLY AUGUST 31, 2011

AMENDED IN ASSEMBLY AUGUST 26, 2011

SENATE BILL

No. 299

Introduced by Senator Evans

(Coauthor: Senator Leno)

*(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley,
Huffman, Bonnie Lowenthal, and Skinner)*

February 14, 2011

An act to amend Section 12945 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 299, as amended, Evans. Employment: pregnancy or childbirth leave.

Existing law prohibits employment discrimination based on sex or disability.

Existing law prohibits an employer from refusing to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable time of up to 4 months before returning to work.

This bill would also prohibit an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes that leave, as specified.

This bill would incorporate additional changes to Section 12945 of the Government Code proposed by AB 592, to be operative only if AB 592 and this bill are both enacted, both bills become effective on or before January 1, 2012, and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12945 of the Government Code is amended to read:

12945. In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and 12940, it shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

(a) (1) For an employer to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the commission's regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the female employee is disabled on account of pregnancy, childbirth, or a related medical condition.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(2) (A) For an employer to refuse to maintain and pay for coverage for an eligible female employee who takes leave pursuant to paragraph (1) under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed four months over the course of a 12-month period, commencing on the date the leave taken under paragraph (1) begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in this paragraph shall preclude an employer from maintaining and paying for coverage under a group health plan beyond four months. An employer may recover from the employee the premium that the employer paid as required under this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(i) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(ii) The employee's failure to return from leave is for a reason other than one of the following:

1 (I) The employee taking leave under the Moore-Brown-Roberti
2 Family Rights Act (Sections 12945.2 and 19702.3 of the
3 Government Code).

4 (II) The continuation, recurrence, or onset of a health condition
5 that entitles the employee to leave under paragraph (1) or other
6 circumstance beyond the control of the employee.

7 (B) If the employer is a state agency, the collective bargaining
8 agreement shall govern with respect to the continued receipt by
9 an eligible female employee of the health care coverage specified
10 in subparagraph (A).

11 (b) (1) For an employer to refuse to provide reasonable
12 accommodation for an employee for a condition related to
13 pregnancy, childbirth, or a related medical condition, if she so
14 requests, with the advice of her health care provider.

15 (2) For an employer who has a policy, practice, or collective
16 bargaining agreement requiring or authorizing the transfer of
17 temporarily disabled employees to less strenuous or hazardous
18 positions for the duration of the disability to refuse to transfer a
19 pregnant female employee who so requests.

20 (3) For an employer to refuse to temporarily transfer a pregnant
21 female employee to a less strenuous or hazardous position for the
22 duration of her pregnancy if she so requests, with the advice of
23 her physician, where that transfer can be reasonably
24 accommodated. However, no employer shall be required by this
25 section to create additional employment that the employer would
26 not otherwise have created, nor shall the employer be required to
27 discharge any employee, transfer any employee with more
28 seniority, or promote any employee who is not qualified to perform
29 the job.

30 (c) This section shall not be construed to affect any other
31 provision of law relating to sex discrimination or pregnancy, or in
32 any way to diminish the coverage of pregnancy, childbirth, or a
33 medical condition related to pregnancy or childbirth under any
34 other provision of this part, including subdivision (a) of Section
35 12940.

36 *SEC. 1.5. Section 12945 of the Government Code is amended*
37 *to read:*

38 12945. (a) In addition to the provisions that govern pregnancy,
39 childbirth, or a related medical ~~conditions~~ condition in Sections
40 12926 and 12940, ~~it~~ each of the following shall be an unlawful

1 employment practice, unless based upon a bona fide occupational
2 qualification:

3 (a)

4 (1) For an employer to refuse to allow a female employee
5 disabled by pregnancy, childbirth, or ~~a related medical condition~~
6 *condition* to take a leave for a reasonable period of time not to
7 exceed four months and thereafter return to work, as set forth in
8 the commission's regulations. The employee shall be entitled to
9 utilize any accrued vacation leave during this period of time.
10 Reasonable period of time means that period during which the
11 female employee is disabled on account of pregnancy, childbirth,
12 or ~~a related medical condition~~ *condition*.

13 An employer may require an employee who plans to take a leave
14 pursuant to this subdivision to give the employer reasonable notice
15 of the date the leave shall commence and the estimated duration
16 of the leave.

17 (2) (A) *For an employer to refuse to maintain and pay for*
18 *coverage for an eligible female employee who takes leave pursuant*
19 *to paragraph (1) under a group health plan, as defined in Section*
20 *5000(b)(1) of the Internal Revenue Code of 1986, for the duration*
21 *of the leave, not to exceed four months over the course of a*
22 *12-month period, commencing on the date the leave taken under*
23 *paragraph (1) begins, at the level and under the conditions that*
24 *coverage would have been provided if the employee had continued*
25 *in employment continuously for the duration of the leave. Nothing*
26 *in this paragraph shall preclude an employer from maintaining*
27 *and paying for coverage under a group health plan beyond four*
28 *months. An employer may recover from the employee the premium*
29 *that the employer paid as required under this subdivision for*
30 *maintaining coverage for the employee under the group health*
31 *plan if both of the following conditions occur:*

32 (i) *The employee fails to return from leave after the period of*
33 *leave to which the employee is entitled has expired.*

34 (ii) *The employee's failure to return from leave is for a reason*
35 *other than one of the following:*

36 (I) *The employee taking leave under the Moore-Brown-Roberti*
37 *Family Rights Act (Sections 12945.2 and 19702.3 of the*
38 *Government Code).*

1 ~~(II) The continuation, recurrence, or onset of a health condition~~
2 ~~that entitles the employee to leave under paragraph (1) or other~~
3 ~~circumstance beyond the control of the employee.~~

4 ~~(B) If the employer is a state agency, the collective bargaining~~
5 ~~agreement shall govern with respect to the continued receipt by~~
6 ~~an eligible female employee of the health care coverage specified~~
7 ~~in subparagraph (A).~~

8 ~~(b) (1) —~~

9 ~~(3) (A) For an employer to refuse to provide reasonable~~
10 ~~accommodation for an employee for ~~conditions~~ a condition related~~
11 ~~to pregnancy, childbirth, or a related medical ~~conditions~~ condition,~~
12 ~~if she so requests, with the advice of her health care provider.~~

13 ~~(2) —~~

14 ~~(B) For an employer who has a policy, practice, or collective~~
15 ~~bargaining agreement requiring or authorizing the transfer of~~
16 ~~temporarily disabled employees to less strenuous or hazardous~~
17 ~~positions for the duration of the disability to refuse to transfer a~~
18 ~~pregnant female employee who so requests.~~

19 ~~(3) —~~

20 ~~(C) For an employer to refuse to temporarily transfer a pregnant~~
21 ~~female employee to a less strenuous or hazardous position for the~~
22 ~~duration of her pregnancy if she so requests, with the advice of~~
23 ~~her physician, where that transfer can be reasonably~~
24 ~~accommodated. However, no employer shall be required by this~~
25 ~~section to create additional employment that the employer would~~
26 ~~not otherwise have created, nor shall the employer be required to~~
27 ~~discharge any employee, transfer any employee with more~~
28 ~~seniority, or promote any employee who is not qualified to perform~~
29 ~~the job.~~

30 ~~(4) For an employer to interfere with, restrain, or deny the~~
31 ~~exercise of, or the attempt to exercise, any right provided under~~
32 ~~this section.~~

33 ~~(e) —~~

34 ~~(b) This section shall not be construed to affect any other~~
35 ~~provision of law relating to sex discrimination or pregnancy, or in~~
36 ~~any way to diminish the coverage of pregnancy, childbirth, or a~~
37 ~~medical ~~conditions~~ condition related to pregnancy or childbirth~~
38 ~~under any other ~~provisions~~ provision of this part, including~~
39 ~~subdivision (a) of Section 12940.~~

1 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
2 *Section 12945 of the Government Code proposed by both this bill*
3 *and Assembly Bill 592. It shall only become operative if (1) both*
4 *bills are enacted and become effective on or before January 1,*
5 *2012, (2) each bill amends Section 12945 of the Government Code,*
6 *and (3) this bill is enacted after Assembly Bill 592, in which case*
7 *Section 1 of this bill shall not become operative.*

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